

HOUSE BILL NO. 117

INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURE FOR REVIEW OF ADMINISTRATIVE RULES BY THE LEGISLATIVE SERVICES DIVISION; PROVIDING FOR POWERS AND DUTIES; REQUIRING EXECUTIVE BRANCH AGENCIES TO SUBMIT PROPOSED OR ADOPTED RULES TO THE DIVISION; AMENDING SECTIONS 2-4-302, 2-4-303, AND 5-11-112, MCA; AND PROVIDING A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall, at least 60 days before it gives the written notice required by this subsection, submit a proposed rule to the legislative services division for review of administrative rules provided for in [section 3] and then give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which notification was given to the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was notified, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

- (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and
- (ii) the number of persons affected.

(2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as

1 provided in 2-4-312. Within 3 days of publication, a copy of the published proposal notice must be sent to
2 interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings,
3 and to the office of any professional, trade, or industrial society or organization or member of those entities who
4 has filed a request with the appropriate administrative rule review committee when the request has been
5 forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of
6 interested persons and the subject or subjects in which each person on the list is interested. A person who
7 submits a written comment or attends a hearing in regard to proposed agency action under this part must be
8 informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice
9 an advisement explaining how persons may be placed on the list of interested persons and if it complies with
10 subsection (7).

11 (b) The appropriate administrative rule review committee shall forward a list of all organizations or
12 persons who have submitted a request to be informed of agency actions to the agencies that the committee
13 oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request
14 of any person requesting to be added to or deleted from the list.

15 (c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the
16 agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other
17 electronic communications system available to the public.

18 (d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice
19 for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor
20 of the legislation. If the legislation affected more than one program, notice must be given to the primary sponsor
21 pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for
22 a program.

23 (ii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as
24 required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor notified under
25 subsection (2)(d)(i).

26 (3) If a statute provides for a method of publication different from that provided in subsection (2), the
27 affected agency shall comply with the statute in addition to the requirements contained in this section. However,
28 the notice period may not be less than 30 days or more than 6 months.

29 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons
30 at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views,

1 or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed
2 for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that
3 opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons
4 who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate
5 administrative rule review committee, or by an association having not less than 25 members who will be directly
6 affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall
7 schedule an oral hearing.

8 (5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case
9 procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by
10 statute, nothing in this section alters that requirement.

11 (6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the
12 agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a
13 new proposal for purposes of compliance with this chapter.

14 (7) At the commencement of a hearing on the intended action, the person designated by the agency to
15 preside at the hearing shall:

16 (a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the
17 register; and

18 (b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an
19 opportunity to place their names on the list.

20 (8) For purposes of notifying primary sponsors under subsections (2)(a) and (2)(d) who are no longer
21 members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's
22 name, address, e-mail address, and telephone number on file with the secretary of state. An agency proposing
23 rules shall consult the register when providing sponsor notice."
24

25 **Section 2.** Section 2-4-303, MCA, is amended to read:

26 **"2-4-303. Emergency or temporary rules.** (1) (a) If an agency finds that an imminent peril to the public
27 health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its
28 reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or
29 hearing or upon any abbreviated notice and hearing that it finds practicable and without submission to the
30 legislative services division for review of administrative rules as provided in [section 3], to adopt an emergency

rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(b) An emergency rule may not be used to implement an administrative budget reduction.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable and without submission to the legislative services division for review of administrative rules as provided in [section 3], but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective."

NEW SECTION. Section 3. Review of administrative rules -- duties -- schedule for review of previously adopted rules. (1) There is within the legislative services division a program for review of administrative rules. The program is staffed by at least two attorneys experienced in the operation of the Montana legislature and the review and adoption of administrative rules, whose primary duty is the review of administrative rules as provided in this section. The program may also employ necessary clerical and other support staff.

(2) The program shall:

(a) review, on behalf of those committees designated in subsection (2)(c), a rule proposed or adopted, or both, by the executive branch of state government for compliance with the requirements of the Montana

1 Administrative Procedure Act;

2 (b) determine, in consultation with agencies and individuals of the executive branch of state government,
3 those proposed or adopted rules that violate the requirements of the Montana Administrative Procedure Act;

4 (c) report its findings to the committees provided for in 5-5-202, 5-12-201, 5-13-201, 5-15-101, and
5 5-16-101;

6 (d) make a report to the legislature, as provided in 5-11-210, concerning its activities; and

7 (e) prepare legislation that the appropriate rule review committee determines necessary or desirable
8 concerning its functions and administrative rulemaking.

9 (3) If the program chooses to review some or all of the rules adopted by executive branch agencies
10 before October 1, 2007, it shall, in consultation with agencies of the executive branch and appropriate committees
11 of the legislature, determine a schedule upon which agencies shall submit rulemaking records for adopted rules
12 to the program. Agencies shall submit their rulemaking records and shall comply with the schedule as determined
13 by the program.

14
15 **Section 4.** Section 5-11-112, MCA, is amended to read:

16 **"5-11-112. Functional organization and responsibilities.** (1) The legislative council may establish a
17 functional organization within the legislative services division in order to effectively and efficiently carry out all of
18 the responsibilities delegated to the division by law or legislative rule. The responsibilities of the legislative
19 services division include the following:

20 (a) document services:

21 (i) bill drafting and preparation for introduction;

22 (ii) engrossing and enrolling;

23 (iii) distribution of legislative bills and information;

24 (iv) coordination of legislative printing; and

25 (v) publication of legislative records;

26 (b) research and reference services:

27 (i) general and specialized legislative research; and

28 (ii) legislative reference and information;

29 (c) legal services:

30 (i) legal review of draft bills;

- 1 (ii) legal counseling on legislative matters;
- 2 (iii) legal support for consolidated entities; ~~and~~
- 3 (iv) review of proposed or adopted executive branch administrative rules as provided in [section 3]; and
- 4 ~~(iv)~~(v) support for the functions of the code commissioner provided in 1-11-201;
- 5 (d) committee services:
- 6 (i) research, legal, and administrative staff support for consolidated committees as assigned, including
- 7 support for interim committees organized under Title 5, chapter 5, part 2; and
- 8 (ii) research and legal support for legislative standing and select committees;
- 9 (e) broadcasting services, in accordance with Title 5, chapter 11, part 11;
- 10 (f) management and business services:
- 11 (i) financial records;
- 12 (ii) claims and payrolls;
- 13 (iii) coordination of procurement of printing, supplies, and equipment; and
- 14 (iv) maintenance of property inventories;
- 15 (g) personnel and administrative services:
- 16 (i) rules for classification and pay; and
- 17 (ii) personnel and administrative policies; and
- 18 (h) information technology services:
- 19 (i) legislative branch network support services;
- 20 (ii) application support and development;
- 21 (iii) communications support and coordination; and
- 22 (iv) information technology planning.

23 (2) The responsibilities of the legislative services division must be fulfilled collaboratively with

24 consolidated entities whenever the efficient operation of the legislative branch is served."

25

26 NEW SECTION. Section 5. Codification instruction. [Section 3] is intended to be codified as an

27 integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 3].

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29 NEW SECTION. Section 6. Termination. [This act] terminates June 30, 2013.

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